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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/916,256	07/30/2001	Wayne Lee Borgen	8200.495	8665

7590 04/21/2005

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EXAMINER
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YEAGLEY, DANIEL S

ART UNIT	PAPER NUMBER
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3611

DATE MAILED: 04/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/916,256

Applicant(s)

BORGES ET AL.

Examiner

Daniel Yeagley

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 December 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) 9 and 19-21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 10-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION*****Double Patenting***

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969). Claims 1 - 9, 10 - 18 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 - 15 of U.S. Patent No. 6,517,462 in view of Onodera '584. Wherein the Borgan patent discloses a double disconnect assembly having a clutch assembly and a first and second axle shaft being axially slidable with respect to the differential and wherein the reference to Onodera discloses another double disconnect assembly on a vehicle having the obvious first and second drive axle; wherein the second drive axle is driven by an obvious drive train and further discloses the disconnect assembly which incorporates a first and second clutch assembly that selectively disengages the drive train and the first and second axle shafts as broadly claimed.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1 – 8 and 10 – 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hasegawa '031 in view of Onodera '584.

Hasegawa shows a double disconnect assembly comprising a primary rear drive axle, an auxiliary rear prop shaft (drive train driving one of the auxiliary (second) drive axles of the tandem vehicle (figure 1, 9, 10, 12 – 15), wherein the double disconnect assembly comprises a first clutch assembly 47 *for* engaging and disengaging a drive train (paragraph 44) and a second clutch assembly 57 which selectively engage and disengage a first and second axle shaft 25 of a second drive axle from a differential assembly (figure 15; but best shown in figure 3), wherein when the first and second clutch assemblies are in a non-engaged condition the differential assembly is in a non-rotating state, the differential assembly comprises pinion gears 55 mounted with respect to a cross pin 54, side gears 56 having axially extending central bores with splines (boss portion) formed on portions of the bores to engage splines on the axle shafts and rotatable about a transverse axis coaxial with axle shafts, such that the axle shafts are in driving engagement with the side gears when the axle shafts are in a clutch engaging position and are free wheeling when the axle shafts are in a clutch disengaging position and includes an interconnecting member interconnecting the first and second axle having a rod 52 extending from an end of the first axle shaft to an end of the second axle shaft and passes through the cross pin, but lacked the first and second axle shafts being axially slidable with respect to the differential assembly to mutually disconnect the axle shafts from the first and second side gears.

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Onodera discloses a double disconnect assembly for a drive assembly that shows the prior art clutch assembly that incorporates a biased axially slidable clutch assembly comprising a first axle shaft (left side of element 36 and element 29a) and second axle shaft (right side of element 36) and an interconnecting member (intermediate portion of numeral 36 comprising a rod extending from an end of the first axle shaft to an end of the second axle shaft and passing through a cross pin 25 which interconnects the first and second axle shafts to provide simultaneous axial movement of the axle shafts of a disconnect assembly which utilizes sliding the axle shafts with respect to a differential assembly (figure 3) for selectively engaging and disengaging the axle shafts of the disconnect assembly, wherein the first and second axle shafts have clutch members (splines 29a1) of axial spaced rows of gear teeth that engage clutch members (splines 29b1) on a side gear 29b and includes a clutch collar 30 mounted on one of the axle shafts with an actuator arm 34b that engages the clutch collar for slidably moving the axle shafts between a clutch engaging and disengaging position by use of a compression spring 35 as claimed.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the clutch means between the first and second axle shafts of Hasegawa tandem driven double disconnect assembly with a modified or alternative type clutching means, such like that shown by Onodera slidable clutch type axle shafts utilizing biased sliding splined axle shafts to engage and disengage the axle shafts of a disconnect assembly simple as an alternative means to selectively engage and disengage axle shafts of a disconnect assembly of a vehicle as taught by Onodera and is considered a simple matter of design choice dependent upon the users preference.

***Response to Arguments***

4. It was noted in the remarks filed 12/20/04 that an amendment was submitted; however in a phone conversation with the attorney Matthew Stavish on 3/11/05, it was revealed that the amendment was not submitted and the statement was an error. It is also noted that applicant wishes to hold in abeyance the double patenting rejection. Regarding applicant's arguments filed 12/20/04 which have been fully considered but they are not persuasive. However, the arguments are moot in view of new grounds of rejections as stated above which more clearly shows the art as claimed.

***Conclusion***

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Bigley '967 shows a disconnect assembly having a splined slidable axle shaft clutch assembly.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel Yeagley whose telephone number is (571)-272-6655. The examiner can normally be reached on Mon. - Fri; first Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley D Morris can be reached on (571) - 272 - 6651. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

D.Y.



WESLEY D. MORRIS

PATENT EXAMINER

CENTER 3600